

Blog Entry: Seventh Circuit dismisses FACTA Class Action on Spokeo Grounds

DECEMBER 14, 2016

On December 13, 2016, the Seventh Circuit Court of Appeals dismissed a plaintiff's claims under the Fair and Accurate Credit Transactions Act ("FACTA") for lack of jurisdiction. In the first federal appellate decision involving FACTA following the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), the Seventh Circuit held that the plaintiff failed to establish that he suffered an injury-in-fact for purposes of Article III standing.

Plaintiff Jeremy Meyers brought suit on behalf of himself and a class of persons for one simple reason: His receipt given to him after dining at Nicolet Restaurant failed to abbreviate the expiration date of his credit card, as required by FACTA. His class action lawsuit sought to represent a class of persons who had been provided a non-compliant receipt at Nicolet, and he sought only statutory damages.

On his motion for class certification, the district court held that Meyers met all of Rule 23(a)'s requirements. However, the district court held that Meyers had failed to establish that class wide issues would predominate over individual issues. Simultaneously, Meyers was pursuing an appeal to the Seventh Circuit in *Meyers I*, in which the Seventh Circuit held that Meyers could not proceed against the Oneida Tribe of Wisconsin on sovereign immunity grounds. In that appeal, the Seventh Circuit had declined to address whether Meyers had suffered an injury-in-fact for Article III standing purposes, and did not address whether class certification was appropriate.

In this appeal, the Seventh Circuit declined to address the merits of the district court's denial of class certification and instead held that Meyers failed to satisfy an injury-in-fact. Relying solely on *Spokeo*, the Seventh Circuit held as follows:

Spokeo compels the conclusion that Meyers' allegations are insufficient to satisfy the injury-in-fact requirement for Article III standing. The allegations demonstrate that Meyers did not suffer any harm because of Nicolet's printing of the expiration date on his receipt. Nor has the violation created any appreciable risk of harm. After all, Meyers discovered the violation immediately and nobody else ever saw the non-compliant receipt. In these circumstances, it is hard to imagine how the expiration date's presence could have increased the risk that Meyers' identity would be compromised.

The Seventh Circuit expressly held that failure to abbreviate a credit card's expiration date, without more, is insufficient to establish Article III standing under FACTA.

At oral argument, Meyers had argued that FACTA grants a "substantive" right to receive a compliant receipt, and as such Meyers possessed Article III standing. In an interesting footnote, the Seventh Circuit stated that it made no difference whether the right is characterized as "substantive" or "procedural." A "violation," the Seventh Circuit held, "must be accompanied by an injury-in-fact. A violation of a statute that causes no harm does not trigger a federal case. That is one of the lessons of *Spokeo*."

The case is *Meyers v. Nicolet Restaurant of De Pere, LLC*, No. 16-2075 (7th Cir. Dec. 13, 2016).